

OFFICE COPY

Prepared By _____

Approved By _____

An act to amend Sections 1771, 1771.7, 1771.8, 1776.3, 1783.3, 1785, 1793.13, 1793.23, 1793.50, and 1793.60 of, and to repeal Sections 1777, 1777.2, and 1777.4 of, the Health and Safety Code, relating to continuing care.

DRAFT

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 1771 of the Health and Safety Code is amended to read:

1771. Unless the context otherwise requires, the definitions in this section govern the interpretation of this chapter.

(a) (1) “Affiliate” means any person, corporation, limited liability company, business trust, trust, partnership, unincorporated association, or other legal entity that directly or indirectly controls, is controlled by, or is under common control with, a provider or applicant.

(2) “Affinity group” means a grouping of entities sharing a common interest, philosophy, or connection (e.g., military officers, religion).

(3) “Annual report” means the report each provider is required to file annually with the department, as described in Section 1790.

(4) “Applicant” means any entity, or combination of entities, that submits and has pending an application to the department for a permit to accept deposits and a certificate of authority.

(5) “Assisted living services” includes, but is not limited to, assistance with personal activities of daily living, including dressing, feeding, toileting, bathing, grooming, mobility, and associated tasks, to help provide for and maintain physical and psychosocial comfort.

(6) “Assisted living unit” means the living area or unit within a continuing care retirement community that is specifically designed to provide ongoing assisted living services.

(7) “Audited financial statement” means financial statements prepared in accordance with generally accepted accounting principles including the opinion of an independent certified public accountant, and notes to the financial statements considered customary or necessary to provide full disclosure and complete information regarding the provider’s financial statements, financial condition, and operation.

(b) (reserved)

(c) (1) “Cancel” means to destroy the force and effect of an agreement or continuing care contract.

(2) “Cancellation period” means the 90-day period, beginning when the resident physically moves into the continuing care retirement community, during which the resident may cancel the continuing care contract, as provided in Section 1788.2.

(3) “Care” means nursing, medical, or other health-related services, protection or supervision, assistance with the personal activities of daily living, or any combination of those services.

(4) “Cash equivalent” means certificates of deposit and United States treasury securities with a maturity of five years or less.

(5) “Certificate” or “certificate of authority” means the certificate issued by the department, properly executed and bearing the State Seal, authorizing a specified provider to enter into one or more continuing care contracts at a single specified continuing care retirement community.

(6) “Condition” means a restriction, specific action, or other requirement imposed by the department for the initial or continuing validity of a permit to accept deposits, a provisional certificate of authority, or a certificate of authority. A condition may limit

the circumstances under which the provider may enter into any new deposit agreement or contract, or may be imposed as a condition precedent to the issuance of a permit to accept deposits, a provisional certificate of authority, or a certificate of authority.

(7) "Consideration" means some right, interest, profit, or benefit paid, transferred, promised, or provided by one party to another as an inducement to contract.

Consideration includes some forbearance, detriment, loss, or responsibility, that is given, suffered, or undertaken by a party as an inducement to another party to contract.

(8) "Continuing care contract" means a contract that includes a continuing care promise made, in exchange for an entrance fee, the payment of periodic charges, or both types of payments. A continuing care contract may consist of one agreement or a series of agreements and other writings incorporated by reference.

~~(9) "Continuing care advisory committee" means an advisory panel appointed pursuant to Section 1777.~~

~~(10)~~

(9) "Continuing care promise" means a promise, expressed or implied, by a provider to provide one or more elements of care to an elderly resident for the duration of his or her life or for a term in excess of one year. Any such promise or representation, whether part of a continuing care contract, other agreement, or series of agreements, or contained in any advertisement, brochure, or other material, either written or oral, is a continuing care promise.

~~(11)~~

(10) "Continuing care retirement community" means a facility located within the State of California where services promised in a continuing care contract are

provided. A distinct phase of development approved by the department may be considered to be the continuing care retirement community when a project is being developed in successive distinct phases over a period of time. When the services are provided in residents' own homes, the homes into which the provider takes those services are considered part of the continuing care retirement community.

~~(12)~~

(11) "Control" means directing or causing the direction of the financial management or the policies of another entity, including an operator of a continuing care retirement community, whether by means of the controlling entity's ownership interest, contract, or any other involvement. A parent entity or sole member of an entity controls a subsidiary entity provider for a continuing care retirement community if its officers, directors, or agents directly participate in the management of the subsidiary entity or in the initiation or approval of policies that affect the continuing care retirement community's operations, including, but not limited to, approving budgets or the administrator for a continuing care retirement community.

(d) (1) "Department" means the State Department of Social Services.

(2) "Deposit" means any transfer of consideration, including a promise to transfer money or property, made by a depositor to any entity that promises or proposes to promise to provide continuing care, but is not authorized to enter into a continuing care contract with the potential depositor.

(3) "Deposit agreement" means any agreement made between any entity accepting a deposit and a depositor. Deposit agreements for deposits received by an applicant

prior to the department's release of funds from the deposit escrow account shall be subject to the requirements described in Section 1780.4.

(4) "Depository" means a bank or institution that is a member of the Federal Deposit Insurance Corporation or a comparable deposit insurance program.

(5) "Depositor" means any prospective resident who pays a deposit. Where any portion of the consideration transferred to an applicant as a deposit or to a provider as consideration for a continuing care contract is transferred by a person other than the prospective resident or a resident, that third-party transferor shall have the same cancellation or refund rights as the prospective resident or resident for whose benefit the consideration was transferred.

(6) "Director" means the Director of Social Services.

(e) (1) "Elderly" means an individual who is 60 years of age or older.

(2) "Entity" means an individual, partnership, corporation, limited liability company, and any other form for doing business. Entity includes a person, sole proprietorship, estate, trust, association, and joint venture.

(3) "Entrance fee" means the sum of any initial, amortized, or deferred transfer of consideration made or promised to be made by, or on behalf of, a person entering into a continuing care contract for the purpose of ensuring care or related services pursuant to that continuing care contract or as full or partial payment for the promise to provide care for the term of the continuing care contract. Entrance fee includes the purchase price of a condominium, cooperative, or other interest sold in connection with a promise of continuing care. An initial, amortized, or deferred transfer of

consideration that is greater in value than 12 times the monthly care fee shall be presumed to be an entrance fee.

(4) “Equity” means the value of real property in excess of the aggregate amount of all liabilities secured by the property.

(5) “Equity interest” means an interest held by a resident in a continuing care retirement community that consists of either an ownership interest in any part of the continuing care retirement community property or a transferable membership that entitles the holder to reside at the continuing care retirement community.

(6) “Equity project” means a continuing care retirement community where residents receive an equity interest in the continuing care retirement community property.

(7) “Equity securities” shall refer generally to large and midcapitalization corporate stocks that are publicly traded and readily liquidated for cash, and shall include shares in mutual funds that hold portfolios consisting predominantly of these stocks and other qualifying assets, as defined by Section 1792.2. Equity securities shall also include other similar securities that are specifically approved by the department.

(8) “Escrow agent” means a bank or institution, including, but not limited to, a title insurance company, approved by the department to hold and render accountings for deposits of cash or cash equivalents.

(f) “Facility” means any place or accommodation where a provider provides or will provide a resident with care or related services, whether or not the place or accommodation is constructed, owned, leased, rented, or otherwise contracted for by the provider.

(g) (reserved)

(h) (reserved)

(i) (1) “Inactive certificate of authority” means a certificate that has been terminated under Section 1793.8.

(2) “Investment securities” means any of the following:

(A) Direct obligations of the United States, including obligations issued or held in book-entry form on the books of the United States Department of the Treasury or obligations the timely payment of the principal of, and the interest on, which are fully guaranteed by the United States.

(B) Obligations, debentures, notes, or other evidences of indebtedness issued or guaranteed by any of the following:

(i) The Federal Home Loan Bank System.

(ii) The Export-Import Bank of the United States.

(iii) The Federal Financing Bank.

(iv) The Government National Mortgage Association.

(v) The Farmer’s Home Administration.

(vi) The Federal Home Loan Mortgage Corporation of the Federal Housing Administration.

(vii) Any agency, department, or other instrumentality of the United States if the obligations are rated in one of the two highest rating categories of each rating agency rating those obligations.

(C) Bonds of the State of California or of any county, city and county, or city in this state, if rated in one of the two highest rating categories of each rating agency rating those bonds.

(D) Commercial paper of finance companies and banking institutions rated in one of the two highest categories of each rating agency rating those instruments.

(E) Repurchase agreements fully secured by collateral security described in subparagraph (A) or (B), as evidenced by an opinion of counsel, if the collateral is held by the provider or a third party during the term of the repurchase agreement, pursuant to the terms of the agreement, subject to liens or claims of third parties, and has a market value, which is determined at least every 14 days, at least equal to the amount so invested.

(F) Long-term investment agreements, which have maturity dates in excess of one year, with financial institutions, including, but not limited to, banks and insurance companies or their affiliates, if the financial institution's paying ability for debt obligations or long-term claims or the paying ability of a related guarantor of the financial institution for these obligations or claims, is rated in one of the two highest rating categories of each rating agency rating those instruments, or if the short-term investment agreements are with the financial institution or the related guarantor of the financial institution, the long-term or short-term debt obligations, whichever is applicable, of which are rated in one of the two highest long-term or short-term rating categories, of each rating agency rating the bonds of the financial institution or the related guarantor, provided that if the rating falls below the two highest rating categories, the investment agreement shall allow the provider the option to replace the financial

institution or the related guarantor of the financial institution or shall provide for the investment securities to be fully collateralized by investments described in subparagraph (A), and, provided further, if so collateralized, that the provider has a perfected first security lien on the collateral, as evidenced by an opinion of counsel and the collateral is held by the provider.

(G) Banker's acceptances or certificates of deposit of, or time deposits in, any savings and loan association that meets any of the following criteria:

(i) The debt obligations of the savings and loan association, or in the case of a principal bank, of the bank holding company, are rated in one of the two highest rating categories of each rating agency rating those instruments.

(ii) The certificates of deposit or time deposits are fully insured by the Federal Deposit Insurance Corporation.

(iii) The certificates of deposit or time deposits are secured at all times, in the manner and to the extent provided by law, by collateral security described in subparagraph (A) or (B) with a market value, valued at least quarterly, of no less than the original amount of moneys so invested.

(H) Taxable money market government portfolios restricted to obligations issued or guaranteed as to payment of principal and interest by the full faith and credit of the United States.

(I) Obligations the interest on which is excluded from gross income for federal income tax purposes and money market mutual funds whose portfolios are restricted to these obligations, if the obligations or mutual funds are rated in one of the two highest rating categories by each rating agency rating those obligations.

(J) Bonds that are not issued by the United States or any federal agency, but that are listed on a national exchange and that are rated at least “A” by Moody’s Investors Service, or the equivalent rating by Standard and Poor’s Corporation or Fitch Investors Service.

(K) Bonds not listed on a national exchange that are traded on an over-the-counter basis, and that are rated at least “Aa” by Moody’s Investors Service or “AA” by Standard and Poor’s Corporation or Fitch Investors Service.

(j) (reserved)

(k) (reserved)

(l) “Life care contract” means a continuing care contract that includes a promise, expressed or implied, by a provider to provide or pay for routine services at all levels of care, including acute care and the services of physicians and surgeons, to the extent not covered by other public or private insurance benefits, to a resident for the duration of his or her life. Care shall be provided under a life care contract in a continuing care retirement community having a comprehensive continuum of care, including a skilled nursing facility, under the ownership and supervision of the provider on or adjacent to the premises. No change may be made in the monthly fee based on level of care. A life care contract shall also include provisions to subsidize residents who become financially unable to pay their monthly care fees.

(m) (1) “Monthly care fee” means the fee charged to a resident in a continuing care contract on a monthly or other periodic basis for current accommodations and services including care, board, or lodging. Periodic entrance fee payments or other prepayments shall not be monthly care fees.

(2) “Monthly fee contract” means a continuing care contract that requires residents to pay monthly care fees.

(n) “Nonambulatory person” means a person who is unable to leave a building unassisted under emergency conditions in the manner described by Section 13131.

(o) (reserved)

(p) (1) “Per capita cost” means a continuing care retirement community’s operating expenses, excluding depreciation, divided by the average number of residents.

(2) “Periodic charges” means fees paid by a resident on a periodic basis.

(3) “Permanent closure” means the voluntary or involuntary termination or forfeiture, as specified in subdivisions (a), (b), (g), (h), and (i) of Section 1793.7, of a provider’s certificate of authority or license, or another action that results in the permanent relocation of residents. Permanent closure does not apply in the case of a natural disaster or other event out of the provider’s control.

(4) “Permit to accept deposits” means a written authorization by the department permitting an applicant to enter into deposit agreements regarding a single specified continuing care retirement community.

(5) “Prepaid contract” means a continuing care contract in which the monthly care fee, if any, may not be adjusted to cover the actual cost of care and services.

(6) “Preferred access” means that residents who have previously occupied a residential living unit have a right over other persons to any assisted living or skilled nursing beds that are available at the community.

(7) “Processing fee” means a payment to cover administrative costs of processing the application of a depositor or prospective resident.

(8) “Promise to provide one or more elements of care” means any expressed or implied representation that one or more elements of care will be provided or will be available, such as by preferred access.

(9) “Proposes” means a representation that an applicant or provider will or intends to make a future promise to provide care, including a promise that is subject to a condition, such as the construction of a continuing care retirement community or the acquisition of a certificate of authority.

(10) “Provider” means an entity that provides continuing care, makes a continuing care promise, or proposes to promise to provide continuing care. “Provider” also includes any entity that controls an entity that provides continuing care, makes a continuing care promise, or proposes to promise to provide continuing care. The department shall determine whether an entity controls another entity for purposes of this article. No homeowner’s association, cooperative, or condominium association may be a provider.

(11) “Provisional certificate of authority” means the certificate issued by the department, properly executed and bearing the State Seal, under Section 1786. A provisional certificate of authority shall be limited to the specific continuing care retirement community and number of units identified in the applicant’s application.

(q) (reserved)

(r) (1) “Refund reserve” means the reserve a provider is required to maintain, as provided in Section 1792.6.

(2) “Refundable contract” means a continuing care contract that includes a promise, expressed or implied, by the provider to pay an entrance fee refund or to

repurchase the transferor's unit, membership, stock, or other interest in the continuing care retirement community when the promise to refund some or all of the initial entrance fee extends beyond the resident's sixth year of residency. Providers that enter into refundable contracts shall be subject to the refund reserve requirements of Section 1792.6. A continuing care contract that includes a promise to repay all or a portion of an entrance fee that is conditioned upon reoccupancy or resale of the unit previously occupied by the resident shall not be considered a refundable contract for purposes of the refund reserve requirements of Section 1792.6, provided that this conditional promise of repayment is not referred to by the applicant or provider as a "refund."

(3) "Resale fee" means a levy by the provider against the proceeds from the sale of a transferor's equity interest.

(4) "Reservation fee" refers to consideration collected by an entity that has made a continuing care promise or is proposing to make this promise and has complied with Section 1771.4.

(5) "Resident" means a person who enters into a continuing care contract with a provider, or who is designated in a continuing care contract to be a person being provided or to be provided services, including care, board, or lodging.

(6) "Residential care facility for the elderly" means a housing arrangement as defined by Section 1569.2.

(7) "Residential living unit" means a living unit in a continuing care retirement community that is not used exclusively for assisted living services or nursing services.

(8) "Residential temporary relocation" means the relocation of one or more residents, except in the case of a natural disaster that is out of the provider's control,

from one or more residential living units, assisted living units, skilled nursing units, or a wing, floor, or entire continuing care retirement community building, due to a change of use or major repairs or renovations. A residential temporary relocation shall mean a relocation pursuant to this subdivision that lasts for a period of at least nine months but that does not exceed 18 months without the written agreement of the resident.

(s) (reserved)

(t) (1) "Termination" means the ending of a continuing care contract as provided for in the terms of the continuing care contract.

(2) "Transfer trauma" means death, depression, or regressive behavior, that is caused by the abrupt and involuntary transfer of an elderly resident from one home to another and results from a loss of familiar physical environment, loss of well-known neighbors, attendants, nurses and medical personnel, the stress of an abrupt break in the small routines of daily life, or the loss of visits from friends and relatives who may be unable to reach the new facility.

(3) "Transferor" means a person who transfers, or promises to transfer, consideration in exchange for care and related services under a continuing care contract or proposed continuing care contract, for the benefit of another. A transferor shall have the same rights to cancel and obtain a refund as the depositor under the deposit agreement or the resident under a continuing care contract.

SEC. 2. Section 1771.7 of the Health and Safety Code is amended to read:

1771.7. (a) No resident of a continuing care retirement community shall be deprived of any civil or legal right, benefit, or privilege guaranteed by law, by the

California Constitution, or by the United States Constitution, solely by reason of status as a resident of a community. In addition, because of the discretely different character of residential living unit programs that are a part of continuing care retirement communities, this section shall augment Chapter 3.9 (commencing with Section 1599), Sections 72527 and 87572 of Title 22 of the California Code of Regulations, and other applicable state and federal law and regulations.

(b) A prospective resident shall have the right to visit each of the different care levels and to inspect assisted living and skilled nursing home licensing reports including, but not limited to, the most recent inspection reports and findings of complaint investigations covering a period of no less than two years, prior to signing a continuing care contract.

(c) All residents in residential living units shall have all of the following rights:

- (1) To live in an attractive, safe, and well maintained physical environment.
- (2) To live in an environment that enhances personal dignity, maintains independence, and encourages self-determination.
- (3) To participate in activities that meet individual physical, intellectual, social, and spiritual needs.
- (4) To expect effective channels of communication between residents and staff, and between residents and the administration or provider's governing body.
- (5) To receive a clear and complete written contract that establishes the mutual rights and obligations of the resident and the continuing care retirement community.
- (6) To manage his or her financial affairs.

(7) To be assured that all donations, contributions, gifts, or purchases of provider-sponsored financial products shall be voluntary, and may not be a condition of acceptance or of ongoing eligibility for services.

(8) To maintain and establish ties to the local community.

(9) To organize and participate freely in the operation of independent resident organizations and associations.

(d) A continuing care retirement community shall maintain an environment that enhances the residents' self-determination and independence. The provider shall do both of the following:

(1) Encourage the formation of a resident association by interested residents who may elect a governing body. The provider shall provide space and post notices for meetings, and provide assistance in attending meetings for those residents who request it. In order to promote a free exchange of ideas, at least part of each meeting shall be conducted without the presence of any continuing care retirement community personnel. The association may, among other things, make recommendations to management regarding resident issues that impact the residents' quality of life, quality of care, exercise of rights, safety and quality of the physical environment, concerns about the contract, fiscal matters, or other issues of concern to residents. The management shall respond, in writing, to a written request or concern of the resident association within 20 working days of receiving the written request or concern. Meetings shall be open to all residents to attend as well as to present issues. Executive sessions of the governing body shall be attended only by the governing body.

(2) Establish policies and procedures that promote the sharing of information, dialogue between residents and management, and access to the provider's governing body. The provider shall biennially conduct a resident satisfaction survey that shall be made available to the resident association or its governing body, or, if neither exists, to a committee of residents at least 14 days prior to the next semiannual meeting of residents and the governing board of the provider required by subdivision (c) of Section 1771.8. A copy of the survey shall be posted in a conspicuous location at each facility.

(e) In addition to any statutory or regulatory bill of rights required to be provided to residents of residential care facilities for the elderly or skilled nursing facilities, the provider shall provide a copy of the bill of rights prescribed by this section to each resident at the time or before the resident signs a continuing care contract, and at any time when the resident is proposed to be moved to a different level of care.

(f) Each continuing care retirement community shall prominently post in areas accessible to the residents and visitors a notice that a copy of rights applicable to residents pursuant to this section and any governing regulation issued by the Continuing Care Contracts Branch of the State Department of Social Services is available upon request from the provider. The notice shall also state that the residents have a right to file a complaint with the Continuing Care Contracts Branch for any violation of those rights and shall contain information explaining how a complaint may be filed, including the telephone number and address of the Continuing Care Contracts Branch.

(g) The resident has the right to freely exercise all rights pursuant to this section, in addition to political rights, without retaliation by the provider.

(h) The department may, upon receiving a complaint of a violation of this section, request a copy of the policies and procedures along with documentation on the conduct and findings of any self-evaluations ~~and consult with the Continuing Care Advisory Committee for determination of compliance.~~

(i) Failure to comply with this section shall be grounds for the imposition of conditions on, suspension of, or revocation of the provisional certificate of authority or certificate of authority pursuant to Section 1793.21.

(j) Failure to comply with this section constitutes a violation of residents' rights. Pursuant to Section 1569.49 of the Health and Safety Code, the department shall impose and collect a civil penalty of not more than one hundred fifty dollars (\$150) per violation upon a continuing care retirement community that violates a right guaranteed by this section.

SEC. 3. Section 1771.8 of the Health and Safety Code is amended to read:

1771.8. (a) The Legislature finds and declares all of the following:

(1) The residents of continuing care retirement communities have a unique and valuable perspective on the operations of and services provided in the community in which they live.

(2) Resident input into decisions made by the provider is an important factor in creating an environment of cooperation, reducing conflict, and ensuring timely response and resolution to issues that may arise.

(3) Continuing care retirement communities are strengthened when residents know that their views are heard and respected.

(b) The Legislature encourages continuing care retirement communities to exceed the minimum resident participation requirements established by this section by, among other things, the following:

(1) Encouraging residents to form a resident association, and assisting the residents, the resident association, and its governing body to keep informed about the operation of the continuing care retirement community.

(2) Encouraging residents of a continuing care retirement community or their elected representatives to select residents to participate as board members of the governing body of the provider.

(3) Quickly and fairly resolving any dispute, claim, or grievance arising between a resident and the continuing care retirement community.

(c) The governing body of a provider, or the designated representative of the provider, shall hold, at a minimum, semiannual meetings with the residents of the continuing care retirement community, or the resident association or its governing body, for the purpose of the free discussion of subjects including, but not limited to, income, expenditures, and financial trends and issues as they apply to the continuing care retirement community and proposed changes in policies, programs, and services. Nothing in this section precludes a provider from taking action or making a decision at any time, without regard to the meetings required under this subdivision.

(d) At least 30 days prior to the implementation of any increase in the monthly care fee, the designated representative of the provider shall convene a meeting, to which all residents shall be invited, for the purpose of discussing the reasons for the increase, the basis for determining the amount of the increase, and the data used for

calculating the increase. This meeting may coincide with the semiannual meetings provided for in subdivision (c). At least 14 days prior to the meeting to discuss any increase in the monthly care fee, the provider shall make available to each resident or resident household comparative data showing the budget for the upcoming year, the current year's budget, and actual and projected expenses for the current year, and a copy shall be posted in a conspicuous location at each facility.

(e) The governing body of a provider or the designated representative of the provider shall provide residents with at least 14 days' advance notice of each meeting provided for in subdivisions (c) and (d), and shall permit residents attending the meeting to present issues orally and in writing. The governing body of a provider or the designated representative of the provider shall post the notice of, and the agenda for, the meeting in a conspicuous place in the continuing care retirement community at least 14 days prior to the meeting. The governing body of a provider or the designated representative of the provider shall make available to residents of the continuing care retirement community upon request the agenda and accompanying materials at least seven days prior to the meeting.

(f) Each provider shall make available to the resident association or its governing body, or if neither exists, to a committee of residents, a financial statement of activities for that facility comparing actual costs to budgeted costs broken down by expense category, not less than semiannually, and shall consult with the resident association or its governing body, or, if neither exists, with a committee of residents, during the annual budget planning process. The effectiveness of consultations during the annual budget planning process shall be evaluated at a minimum every two years by the continuing

care retirement community administration. The evaluation, including any policies adopted relating to cooperation with residents, shall be made available to the resident association or its governing body, or, if neither exists, to a committee of residents at least 14 days prior to the next semiannual meeting of residents and the provider's governing body provided for in subdivision (c), and a copy of the evaluation shall be posted in a conspicuous location at each facility.

(g) Each provider shall, within 10 days after the annual report required pursuant to Section 1790 is submitted to the department, provide, at a central and conspicuous location in the community, a copy of the annual report, including the multifacility statement of activities, and including a copy of the annual audited financial statement, but excluding personal confidential information.

(h) Each provider shall maintain, as public information, available upon request to residents, prospective residents, and the public, minutes of the board of director's meetings and shall retain these records for at least three years from the date the records were filed or issued.

(i) The governing body of a provider that is not part of a multifacility organization with more than one continuing care retirement community in the state shall accept at least one resident of the continuing care retirement community it operates to participate as a nonvoting resident representative to the provider's governing body.

(j) In a multifacility organization having more than one continuing care retirement community in the state, the governing body of the multifacility organization shall elect either to have at least one nonvoting resident representative to the provider's governing body for each California-based continuing care retirement community the provider

operates or to have a resident-elected committee composed of representatives of the residents of each California-based continuing care retirement community that the provider operates select or nominate at least one nonvoting resident representative to the provider's governing body for every three California-based continuing care retirement communities or fraction thereof that the provider operates. If a multifacility organization elects to have one representative for every three communities that the provider operates, the provider shall provide to the president of the residents association of each of the communities that do not have a resident representative, the same notice of board meetings, board packets, minutes, and other materials as the resident representative. At the reasonable discretion of the provider, information related to litigation, personnel, competitive advantage, or confidential information that is not appropriate to disclose, may be withheld.

(k) In order to encourage innovative and alternative models of resident involvement, a resident selected pursuant to subdivision (i) to participate as a resident representative to the provider's governing body may, at the option of the resident association, be selected in any one of the following ways:

(1) By a majority vote of the resident association of a provider or by a majority vote of a resident-elected committee of residents of a multifacility organization.

(2) If no resident association exists, any resident may organize a meeting of the majority of the residents of the continuing care retirement community to select or nominate residents to represent them before the governing body.

(3) Any other method designated by the resident association.

(l) The resident association, or organizing resident, or in the case of a multifacility organization, the resident-elected committee of residents, shall give residents of the continuing care retirement community at least 30 days' advance notice of the meeting to select a resident representative and shall post the notice in a conspicuous place at the continuing care retirement community.

(m) (1) Except as provided in subdivision (n), the resident representative shall receive the same notice of board meetings, board packets, minutes, and other materials as members and shall be permitted to attend, speak, and participate in all meetings of the board.

(2) Resident representatives may share information from board meetings with other residents, unless the information is confidential or doing so would violate fiduciary duties to the provider. In addition, a resident representative shall be permitted to attend meetings of the board committee or committees that review the annual budget of the facility or facilities and recommend increases in monthly care fees. The resident shall receive the same notice of committee meetings, information packets, minutes, and other materials as committee members, and shall be permitted to attend, speak at, and participate in, committee meetings. Resident representatives shall perform their duties in good faith and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances.

(n) Notwithstanding subdivision (m), the governing body may exclude resident representatives from its executive sessions and from receiving board materials to be discussed during executive session. However, resident representatives shall be included in executive sessions and shall receive all board materials to be discussed during

executive sessions related to discussions of the annual budgets, increases in monthly care fees, indebtedness, and expansion of new and existing continuing care retirement communities.

(o) The provider shall pay all reasonable travel costs for the resident representative.

(p) The provider shall disclose in writing the extent of resident involvement with the board to prospective residents.

(q) Nothing in this section prohibits a provider from exceeding the minimum resident participation requirements of this section by, for example, having more resident meetings or more resident representatives to the board than required or by having one or more residents on the provider's governing body who are selected with the active involvement of residents.

~~(r) On or before April 1, 2003, the department, with input from the Continuing Care Advisory Committee of the department established pursuant to Section 1777, shall do all of the following:~~

~~(1) Make recommendations to the Legislature as to whether any changes in current law regarding resident representation to the board is needed.~~

~~(2) Provide written guidelines available to residents and providers that address issues related to board participation, including rights and responsibilities, and that provide guidance on the extent to which resident representatives who are not voting members of the board have a duty of care, loyalty, and obedience to the provider and the extent to which providers can classify information as confidential and not subject to disclosure by resident representatives to other residents.~~

SEC. 4. Section 1776.3 of the Health and Safety Code is amended to read:

1776.3. (a) The Continuing Care Contracts Branch of the department shall enter and review each continuing care retirement community in the state at least once every three years to augment the branch's assessment of the provider's financial soundness.

(b) During its facility visits, the branch shall consider the condition of the facility, whether the facility is operating in compliance with applicable state law, and whether the provider is performing the services it has specified in its continuing care contracts.

(c) The branch shall issue guidelines that require each provider to adopt a comprehensive disaster preparedness plan, update that plan at least every three years, submit a copy to the department, and make copies available to residents in a prominent location in each continuing care retirement community facility.

(d) ~~(1)~~ The branch shall respond within 15 business days to residents' rights, service-related, and financially related complaints by residents, and shall furnish to residents upon request and within 15 business days any document or report filed with the department by a continuing care provider, except documents protected by privacy laws.

~~(2) The branch shall provide the Continuing Care Contracts Advisory Committee with a summary of all residents' rights, service-related, and financially related complaints by residents. The provider shall disclose any citation issued by the department pursuant to Section 1793.6 in its disclosure statement to residents as updated annually, and shall post a notice of the citation in a conspicuous location in the facility. The notice shall include a statement indicating that residents may obtain additional information regarding the citation from the provider and the department.~~

~~(c) The branch shall annually review, summarize, and report to the director on the work of the Continuing Care Contracts Advisory Committee, including any issues arising from its review of the condition of any continuing care retirement community or any continuing care retirement community provider, and including any recommendations for actions by the committee, the department, or the Legislature to improve oversight of continuing care retirement community.~~

SEC. 5. Section 1777 of the Health and Safety Code is repealed.

~~1777. (a) The Continuing Care Advisory Committee of the department shall act in an advisory capacity to the department on matters relating to continuing care contracts.~~

~~(b) The members of the committee shall include:~~

~~(1) Three representatives of nonprofit continuing care providers pursuant to this chapter, each of whom shall have offered continuing care services for at least five years prior to appointment. One member shall represent a multifacility provider and shall be appointed by the Governor in even years. One member shall be appointed by the Senate Committee on Rules in odd years. One member shall be appointed by the Speaker of the Assembly in odd years.~~

~~(2) Three senior citizens who are not eligible for appointment pursuant to paragraphs (1) and (4) who shall represent consumers of continuing care services, all of whom shall be residents of continuing care retirement communities but not residents of the same provider. One senior citizen member shall be appointed by the Governor in even years. One senior citizen member shall be appointed by the Senate Committee~~

~~on Rules in odd years. One senior citizen member shall be appointed by the Speaker of the Assembly in odd years.~~

~~(3) A certified public accountant with experience in the continuing care industry, who is not a provider of continuing care services. This member shall be appointed by the Governor in even years.~~

~~(4) A representative of a for-profit provider of continuing care contracts pursuant to this chapter. This member shall be appointed by the Governor in even years.~~

~~(5) An actuary. This member shall be appointed by the Governor in even years.~~

~~(6) One representative of residents of continuing care retirement communities appointed by the senior citizen representatives on the committee.~~

~~(7) One representative of either nonprofit or for-profit providers appointed by the representatives of nonprofit and for-provider providers on the committee.~~

~~(c) Commencing January 1, 1997, all members shall serve two-year terms and be appointed based on their interest and expertise in the subject area. The Governor shall designate the chairperson for the committee with the advice and consent of the Senate. A member may be reappointed at the pleasure of the appointing power. The appointing power shall fill all vacancies on the committee within 60 days. All members shall continue to serve until their successors are appointed and qualified.~~

~~(d) The members of the committee shall serve without compensation, except that each member shall be paid from the Continuing Care Provider Fee Fund a per diem of twenty-five dollars (\$25) for each day's attendance at a meeting of the committee not to exceed six days in any month. The members of the committee shall also receive their actual and necessary travel expenses incurred in the course of their~~

duties. Reimbursement of travel expenses shall be at rates not to exceed those applicable to comparable state employees under Department of Personnel Administration regulations.

(e) Prior to commencement of service, each member shall file with the department a statement of economic interest and a statement of conflict of interest pursuant to Article 3 (commencing with Section 87300) of the Government Code.

(f) If, during the period of appointment, any member no longer meets the qualifications of subdivision (b), that member shall submit his or her resignation to their appointing power and a qualified new member shall be appointed by the same power to fulfill the remainder of the term.

(g) This section shall remain in effect only until January 1, 2013, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2013, deletes or extends that date.

SEC. 6. Section 1777.2 of the Health and Safety Code is repealed.

1777.2. (a) The Continuing Care Advisory Committee shall:

(1) Review the financial and managerial condition of continuing care retirement communities operating under a certificate of authority.

(2) Review the financial condition of any continuing care retirement community that the committee determines is indicating signs of financial difficulty and may be in need of close supervision.

(3) Monitor the condition of those continuing care retirement communities that the department or the chair of the committee may request.

~~(4) Make available consumer information on the selection of continuing care contracts and necessary contract protections in the purchase of continuing care contracts.~~

~~(5) Review new applications regarding financial, actuarial, and marketing feasibility as requested by the department.~~

~~(b) The committee shall make recommendations to the department regarding needed changes in its rules and regulations and upon request provide advice regarding the feasibility of new continuing care retirement communities and the correction of problems relating to the management or operation of any continuing care retirement community. The committee shall also perform any other advisory functions necessary to improve the management and operation of continuing care retirement communities.~~

~~(c) The committee may report on its recommendations directly to the director of the department.~~

~~(d) The committee may hold meetings, as deemed necessary to the performance of its duties.~~

~~(e) This section shall remain in effect only until January 1, 2013, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2013, deletes or extends that date.~~

SEC. 7. Section 1777.4 of the Health and Safety Code is repealed.

~~1777.4. (a) Any member of the Continuing Care Advisory Committee is immune from civil liability based on acts performed in his or her official capacity. Costs of defending civil actions brought against a member for acts performed in his or her official capacity shall be borne by the complainant. However, nothing in this section immunizes any member for acts or omissions performed with malice or in bad faith.~~

~~(b) This section shall remain in effect only until January 1, 2013, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2013, deletes or extends that date.~~

SEC. 8. Section 1783.3 of the Health and Safety Code is amended to read:

1783.3. (a) In order to seek a release of escrowed funds, the applicant shall petition in writing to the department and certify to each of the following:

(1) The construction of the proposed continuing care retirement community or phase is at least 50 percent completed.

(2) At least 10 percent of the total of each applicable entrance fee has been received and placed in escrow for at least 60 percent of the total number of residential living units. Any unit for which a refund is pending may not be counted toward that 60-percent requirement.

(3) Deposits made with cash equivalents have been either converted into, or substituted with, cash or held for transfer to the provider. A cash equivalent deposit may be held for transfer to the provider, if all of the following conditions exist:

(A) Conversion of the cash equivalent instrument would result in a penalty or other substantial detriment to the depositor.

(B) The provider and the depositor have a written agreement stating that the cash equivalent will be transferred to the provider, without conversion into cash, when the deposit escrow is released to the provider under this section.

(C) The depositor is credited the amount equal to the value of the cash equivalent.

(4) The applicant's average performance over any six-month period substantially equals or exceeds its financial and marketing projections approved by the department, for that period.

(5) The applicant has received a commitment for any permanent mortgage loan or other long-term financing.

(b) The department shall instruct the escrow agent to release to the applicant all deposits in the deposit escrow account when all of the following requirements have been met:

(1) The department has confirmed the information provided by the applicant pursuant to subdivision (a).

(2) The department, ~~in consultation with the Continuing Care Advisory Committee,~~ has determined that there has been substantial compliance with projected annual financial statements that served as a basis for issuance of the permit to accept deposits.

(3) The applicant has complied with all applicable licensing requirements in a timely manner.

(4) The applicant has obtained a commitment for any permanent mortgage loan or other long-term financing that is satisfactory to the department.

(5) The applicant has complied with any additional reasonable requirements for release of funds placed in the deposit escrow accounts, established by the department under Section 1785.

(c) The escrow agent shall release the funds held in escrow to the applicant only when the department has instructed it to do so in writing.

(d) When an application describes different phases of construction that will be completed and commence operating at different times, the department may apply the 50 percent construction completion requirement to any one or group of phases requested by the applicant, provided the phase or group of phases is shown in the applicant's projections to be economically viable.

SEC. 9. Section 1785 of the Health and Safety Code is amended to read:

1785. (a) If, at any time prior to issuance of a certificate of authority, the applicant's average performance over any six-month period does not substantially equal or exceed the applicant's projections for that period, the department, ~~after consultation and upon consideration of the recommendations of the Continuing Care Advisory Committee,~~ may take any of the following actions:

(1) Cancel the permit to accept deposits and require that all funds in escrow be returned to depositors immediately.

(2) Increase the required percentages of construction completed, units reserved, or entrance fees to be deposited as required under Sections 1782, 1783.3, 1786, and 1786.2.

(3) Increase the reserve requirements under this chapter.

(b) Prior to taking any actions specified in subdivision (a), the department shall give the applicant an opportunity to submit a feasibility study from a consultant in the area of continuing care, approved by the department, to determine whether in his or her opinion the proposed continuing care retirement community is still viable, and if so, to submit a plan of correction. The department, ~~in consultation with the committee,~~ shall determine if the plan is acceptable.

(c) In making its determination, the department shall take into consideration the overall performance of the proposed continuing care retirement community to date.

(d) If deposits have been released from escrow, the department may further require the applicant to reopen the escrow as a condition of receiving any further entrance fee payments from depositors or residents.

(e) The department may require the applicant to notify all depositors and, if applicable, all residents, of any actions required by the department under this section.

SEC. 10. Section 1793.13 of the Health and Safety Code is amended to read:

1793.13. (a) The department may require a provider to submit a financial plan, if either of the following applies:

(1) A provider fails to file a complete annual report as required by Section 1790.

(2) The department has reason to believe that the provider is insolvent, is in imminent danger of becoming insolvent, is in a financially unsound or unsafe condition, or that its condition is such that it may otherwise be unable to fully perform its obligations pursuant to continuing care contracts.

(b) A provider shall submit its financial plan to the department within 60 days following the date of the department's request. The financial plan shall explain how and when the provider will rectify the problems and deficiencies identified by the department.

(c) The department shall approve or disapprove the plan within 30 days of its receipt.

(d) If the plan is approved, the provider shall immediately implement the plan.

(e) If the plan is disapproved, or if it is determined that the plan is not being fully implemented, the department may, ~~after consultation with and upon consideration of the recommendations of the Continuing Care Advisory Committee,~~ consult with its financial consultants to develop a corrective action plan at the provider's expense, or require the provider to obtain new or additional management capability approved by the department to solve its difficulties. A reasonable period, as determined by the department, shall be allowed for the reorganized management to develop a plan which, subject to the approval of the department ~~and after review by the committee,~~ will reasonably assure that the provider will meet its responsibilities under the law.

SEC. 11. Section 1793.23 of the Health and Safety Code is amended to read:

~~1793.23. (a) The department shall consult with and consider the recommendations of the Continuing Care Advisory Committee prior to conditioning, suspending, or revoking any permit to accept deposits, provisional certificate of authority, or certificate of authority.~~

~~(b) The~~

1793.23. (a) If the department conditions, suspends, or revokes any permit to accept deposits, provisional certificate of authority, or certificate of authority issued pursuant to this chapter, the provider shall have a right of appeal to the department.

The proceedings shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the department shall have all of the powers granted therein. A suspension, condition, or revocation shall remain in effect until completion of the proceedings in favor of the

provider. In all proceedings conducted in accordance with this section, the standard of proof to be applied shall be by a preponderance of the evidence.

(e)

(b) The department may, upon finding of changed circumstances, remove a suspension or condition.

SEC. 12. Section 1793.50 of the Health and Safety Code is amended to read:

1793.50. (a) The department, ~~after consultation with the Continuing Care Advisory Committee,~~ may petition the superior court for an order appointing a qualified administrator to operate a continuing care retirement community, and thereby mitigate imminent crisis situations where elderly residents could lose support services or be moved without proper preparation, in any of the following circumstances:

(1) The provider is insolvent or in imminent danger of becoming insolvent.

(2) The provider is in a financially unsound or unsafe condition.

(3) The provider has failed to establish or has substantially depleted the reserves required by this chapter.

(4) The provider has failed to submit a plan, as specified in Section 1793.13, the department has not approved the plan submitted by the provider, the provider has not fully implemented the plan, or the plan has not been successful.

(5) The provider is unable to fully perform its obligations pursuant to continuing care contracts.

(6) The residents are otherwise placed in serious jeopardy.

(b) The administrator may only assume the operation of the continuing care retirement community in order to accomplish one or more of the following: rehabilitate

the provider to enable it fully to perform its continuing care contract obligations; implement a plan of reorganization acceptable to the department; facilitate the transition where another provider assumes continuing care contract obligations; or facilitate an orderly liquidation of the provider.

(c) With each petition, the department shall include a request for a temporary restraining order to prevent the provider from disposing of or transferring assets pending the hearing on the petition.

(d) The provider shall be served with a copy of the petition, together with an order to appear and show cause why management and possession of the provider's continuing care retirement community or assets should not be vested in an administrator.

(e) The order to show cause shall specify a hearing date, which shall be not less than five nor more than 10 days following service of the petition and order to show cause on the provider.

(f) Petitions to appoint an administrator shall have precedence over all matters, except criminal matters, in the court.

(g) At the time of the hearing, the department shall advise the provider and the court of the name of the proposed administrator.

(h) If, at the conclusion of the hearing, including such oral evidence as the court may consider, the court finds that any of the circumstances specified in subdivision (a) exist, the court shall issue an order appointing an administrator to take possession of the property of the provider and to conduct the business thereof, enjoining the provider from interfering with the administrator in the conduct of the rehabilitation,

and directing the administrator to take steps toward removal of the causes and conditions which have made rehabilitation necessary, as the court may direct.

(i) The order shall include a provision directing the issuance of a notice of the rehabilitation proceedings to the residents at the continuing care retirement community and to other interested persons as the court may direct.

(j) The court may permit the provider to participate in the continued operation of the continuing care retirement community during the pendency of any appointments ordered pursuant to this section and shall specify in the order the nature and scope of the participation.

(k) The court shall retain jurisdiction throughout the rehabilitation proceeding and may issue further orders as it deems necessary to accomplish the rehabilitation or orderly liquidation of the continuing care retirement community in order to protect the residents of the continuing care retirement community.

SEC. 13. Section 1793.60 of the Health and Safety Code is amended to read:

1793.60. (a) If at any time the department determines that further efforts to rehabilitate the provider would not be in the best interest of the residents or prospective residents, or would not be economically feasible, the department may, ~~with the approval of the Continuing Care Advisory Committee,~~ apply to the court for an order of liquidation and dissolution or may apply for other appropriate relief for dissolving the property and bringing to conclusion its business affairs.

(b) Upon issuance of an order directing the liquidation or dissolution of the provider, the department shall revoke the provider's provisional certificate of authority or certificate of authority.

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OFFICE COPY

Prepared By _____

Approved By _____

LEGISLATIVE COUNSEL'S DIGEST

Bill No.

as introduced, _____.

General Subject: Continuing Care Advisory Committee.

Existing law establishes, until January 1, 2013, the Continuing Care Advisory Committee within the State Department of Social Services and requires the committee to act in an advisory capacity to the department on matters relating to continuing care contracts.

This bill would delete the committee and make conforming changes.

Existing law requires any entity that provides continuing care, makes a continuing care promise, or proposes to promise to provide continuing care to disclose any citation issued by the department in its disclosure statement to residents, as specified, and to post a notice of citation in a conspicuous location in the facility where care or related services are or will be provided.

This bill would delete the above-described requirement.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

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